COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH

NO. 02-17-00285-CV

IN RE THE STATE OF TEXAS EX REL. JOHN WARREN — RELATOR

ORIGINAL PROCEEDING
TRIAL COURT NO. CR17-00169

MEMORANDUM OPINION[1]

Relator John Warren, the elected district attorney for Cooke County, Texas, seeks mandamus relief from the order of the respondent, the Honorable Jerry W. Woodlock,[2] "recus[ing]" Warren and his entire office from prosecuting real party in interest Joshua Lynn Edington. Because no evidence was admitted

[1]*See* Tex. R. App. P. 47.4, 52.8(d).

[2]Judge Woodlock is a retired, senior district judge who was presiding by assignment.

to support either disqualification or recusal, which Edington does not dispute, Warren has shown a clear right to relief from the respondent's order.

I. FACTUAL AND PROCEDURAL BACKGROUND

On April 17, 2017, a Cooke County grand jury indicted Edington with possession of between 4 and 200 grams of methamphetamine. Warren assigned the prosecution to himself. Part of the State's case against Edington was (1) testimony from police officers that they saw Edington buy methamphetamine from a confidential informant and (2) Edington's telephone admission to his wife, Jessie, that he knew the methamphetamine was in his car when the police stopped him. Because Edington had "been to prison twice" before, Warren decided to seek a sentence applicable to repeat offenders—confinement for 25 years to life. *See* Tex. Penal Code Ann. § 12.42(d) (West Supp. 2016). After Edington requested a speedy trial, Warren offered him a sentence of fifteen years' confinement in exchange for his guilty plea and warned him that "[t]he last guy who wanted his speedy trial got 40 TDC for a little bit of meth." Edington's insistence on a speedy trial admittedly angered Warren.

The trial court scheduled the trial to begin on July 24 and ordered the parties to appear for a July 20 "[a]nnouncement for trial." After the parties appeared on July 20, Warren approached Jessie outside the courtroom to talk about her possible testimony at the trial. When Jessie mentioned to him that she believed the charges against her husband would be dismissed, Warren told her

"that's not true" and "then proceeded to tell her that the offer was 15, and that if we got to trial, I'm going to ask for 50 years." Warren admitted that this conversation was "unprofessional." Jessie, who characterized Warren's remarks as "cocky," began to cry. Jessie never talked to Edington after this conversation but approached Edington's attorney and told him that she wanted Edington to plead guilty to avoid a lengthy sentence. Based on this conversation, Edington's attorney orally urged a "motion to recuse" Warren and his office from the prosecution.[3]

At the start of the hearing on Edington's motion to disqualify, which occurred on July 21, his attorney stated that after further research, he believed that the respondent could not recuse or disqualify Warren, admitting that his motion was without merit. The respondent stated that he would determine the motion anyway and heard evidence regarding Warren's conversation with Jessie. At the conclusion of the hearing, the respondent stated that he would grant Edington's motion because he did not "like somebody's wife being accosted and talked to about the case." The respondent continued, stating that he would recuse the entire office as well because "since [Warren is] the boss, I would hate to put [the Cooke County assistant district attorneys] in the position of having to

[3]As Warren recognizes, the parties consistently referred to Edington's motion as a motion to recuse, not to disqualify, Warren and his office. Although disqualification is the appropriate term when the involuntary removal of a district attorney is sought, *see Coleman v. State*, 246 S.W.3d 76, 81 (Tex. Crim. App. 2008), we address both recusal and disqualification in an abundance of caution.

ignore [Warren] when y'all are prosecuting the case." On July 28, the respondent signed an order recusing Warren and his office and appointing a special prosecutor to prosecute Edington.

II. DISCUSSION

A. AVAILABILITY OF REMEDY

Mandamus arising in the context of a criminal case is an extraordinary remedy that is available only if the relator has no other adequate remedy at law and the relator seeks to compel a ministerial act. *See In re State ex rel. Weeks*, 391 S.W.3d 117, 121–22 (Tex. Crim. App. 2013) (orig. proceeding). The ministerial-act requirement is met if the relator can show a clear right to the relief sought. *See In re Bonilla*, 424 S.W.3d 528, 533 (Tex. Crim. App. 2014) (orig. proceeding). A clear right to relief arises when the facts and circumstances dictate only one rational decision under unequivocal, well-settled, and clearly controlling legal principles. *Weeks*, 391 S.W.3d at 122. Warren argues that because no evidence of the statutory grounds allowing for disqualification of a district attorney was admitted and because only a district attorney may recuse himself based on a conflict of interest, he has shown a clear right to relief from the order. He further argues that because the State's right to appeal is limited, he does not have an adequate remedy at law. Edington admits that there is "no authority to cite in opposition to the relief sought."[4]

[4]We requested a response to Warren's petition after reaching the tentative opinion that he was entitled to the relief sought. *See* Tex. R. App. P. 52.8(b).

B. ADEQUATE REMEDY AT LAW

The State's right to appeal is limited by statute and does not include the right to appeal a pretrial order disqualifying the elected district attorney. *See* Tex. Code Crim. Proc. Ann. art. 44.01 (West Supp. 2016). Accordingly, we agree with Warren that the State's statutory, yet limited, right to appeal is an inadequate remedy for purposes of this mandamus proceeding. *See Greenwell v. Ct. of Appeals for the Thirteenth Judicial Dist.*, 159 S.W.3d 645, 648–49 (Tex. Crim. App. 2005) (orig. proceeding).

C. MINISTERIAL ACT

Warren argues that the statutes governing a district attorney's recusal or disqualification do not allow for the respondent's action. *See* Tex. Code Crim. Proc. Ann. arts. 2.01, 2.07 (West 2005), art. 2.08 (West Supp. 2016). Indeed, the applicable statutes provide that a trial court cannot force a district attorney's recusal but can only approve a district attorney's request to recuse based on a perceived conflict of interest. *See id.* art. 2.07(b-1); *Johnson v. State*, 169 S.W.3d 223, 229 (Tex. Crim. App. 2005). Disqualification of a district attorney is also strictly governed by statute and may be found only if: (1) the district attorney previously represented the defendant, (2) the district attorney represents both the State and the defendant in the same case, or (3) the district attorney is under criminal investigation based on credible evidence for an offense

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Edington filed a motion to waive his right to respond in which he conceded no authority supported the trial court's order. We **GRANT** the motion.

within his or her jurisdiction. *See* Tex. Code Crim. Proc. Ann. art. 2.08. Additionally, a trial court may order an elected district attorney disqualified if a conflict of interest exists that violates the defendant's due-process rights. *See In re Cox*, 481 S.W.3d 289, 293 (Tex. App.—Fort Worth 2015, orig. proceeding) (en banc op. on reh'g).

Here, there is no conflict of interest rising to the level of a due-process violation, and Edington did not argue that there was at the hearing on his motion. Further, no evidence was admitted that satisfied any of the statutory bases justifying disqualification. Although Warren's conduct could have violated the rules of professional conduct by going beyond discussing Jessie's potential testimony with her, that is insufficient to disqualify the elected district attorney. *See Landers v. State*, 256 S.W.3d 295, 304 (Tex. Crim. App. 2008). Therefore, the respondent's order violated well-settled legal principles, and Warren has shown a clear right to mandamus relief.

III. CONCLUSION

The office of district attorney is constitutionally created and protected; thus, a district attorney's authority cannot be abridged or taken away. *Id.* at 303–04; *Cox*, 481 S.W.3d at 293. By removing the elected district attorney and his office in the absence of any evidence that (1) Edington's due-process rights would be violated by the elected district attorney or his office's continued representation of the State or (2) statutory disqualification was appropriate, the respondent violated

clearly controlling legal principles. Accordingly, we conditionally grant mandamus relief and direct the respondent to vacate his July 28 order recusing Warren and his office and appointing a special prosecutor. *See* Tex. R. App. P. 52.8(c). Our writ will issue only if the respondent fails to comply.

Lee Gabriel

LEE GABRIEL
JUSTICE

PANEL: MEIER, GABRIEL, and SUDDERTH, JJ.

DELIVERED: September 12, 2017